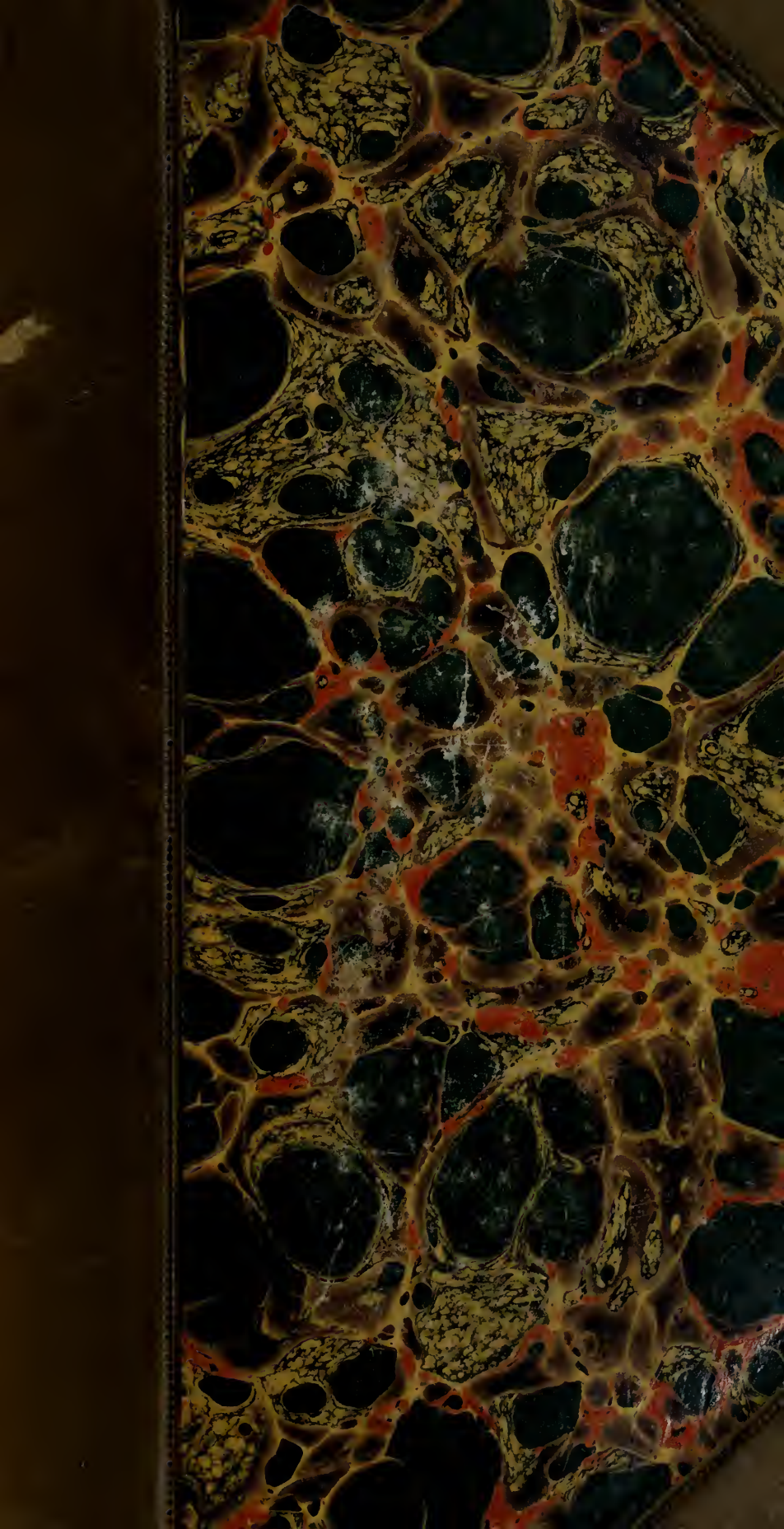

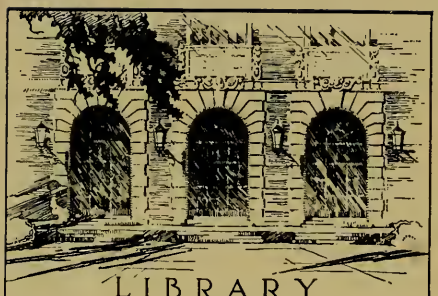

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MARRIAGE
WITH A DECEASED WIFE'S SISTER.

SPEECH

OF THE

RIGHT HON. LORD SELBORNE,

LORD HIGH CHANCELLOR OF ENGLAND,

IN THE

HOUSE OF LORDS, ON THURSDAY, MARCH 13, 1873,

ON THE

SECOND READING OF THE ABOVE BILL.

LONDON:
THE MARRIAGE LAW DEFENCE ASSOCIATION,
25, Parliament Street, S.W.

1873.

SPEECH

OF THE

RIGHT HON. LORD SELBORNE.

The Lord Chancellor: This is no party question. It is, however, a question which affects society in general—not only those who ask for a change of the law for their own particular benefit, but equally those who do not want the law changed. Before I say anything as to that which is the first proposition of the Bill—namely, the expediency of amending the law respecting marriage with a deceased wife's sister—I will follow the example of my noble friend who has just sat down,[1] and make some observations on the Bill itself, which a great number of those who have addressed the House have not paid much attention to. The Bill does not attempt to follow up its own principle to its proper limits, or to reconstruct the law of marriage on any consistent or symmetrical grounds, and consequently it will pave the way to further agitations and further changes. The duty of the office which I still hold obliges me to say that I think it is hard to conceive a more dangerous, a more alarming invitation to systematic, deliberate violation of the law than that contained in the first clause of the Bill. See how the matter stands. Down to the passing of Lord Lyndhurst's Act these marriages were, and always had been, illegal—as illegal as they are now,—and I was surprised to hear some of the old misconceptions on this point revived by the noble Lord who introduced the Bill. However this may be, after the passing of Lord Lyndhurst's Act all possibility of misconception about the law of marriage was at an end. From that time forward, at least, it was known to all men that every such attempt at marriage—for marriage it is not—

[1] The Earl of Dudley.

was prohibited and absolutely void. What said the right reverend prelate who just now so ably addressed your Lordships?[1] He could see no difficulty whatever in the question which appeared so distressing to his right reverend brother[2]—"What answer am I to give to any woman who, after this Bill is passed, wishes to marry her deceased husband's brother, or to any man who desires to marry his deceased wife's niece?" "Oh," says the right reverend prelate (the Bishop of Ripon), "there can be no difficulty about the answer. Tell them to obey the law as it stands while it is the law." And yet the same right rev. prelate is going to vote in favour of a clause which says that no marriage heretofore contracted in violation of the law shall be, or be deemed to have been, void. What will be the value of such admonitions from right rev. prelates to persons troubled in their consciences, if such persons are told in one breath "you must respect the law while it is the law," and in the next breath the same right rev. prelate comes here and says, "I am prepared to vote in favour of those who have not respected the law, so that every one of these illegal marriages shall be declared good from the beginning." Will not persons be encouraged by such legislation to disobey the law, and get up societies in order to induce the Legislature to sanction further disobedience? Are we to say that a certain amount of perseverance in systematic disobedience to the law will not merely induce Parliament to alter a law, which might in some instances be right, but to pass an Act, not of indemnity, but of *ex post facto* justification, in favour of the whole body of law-breakers for many years past? To pass such an Act, repealing the law retrospectively in favour of all law-breakers, is really to tell the people "you are under no obligation to obey the laws." But the matter does not stop there. Every clause of the Bill is more and more monstrous as we go forward. What is the next clause? It is felt that, if you simply passed an *ex post facto* law legalising all these marriages, you might be marrying over again people who had contracted such unions, but who had since repented and married somebody else. It is provided, therefore, that the Bill shall not invalidate any legally subsisting marriage in order to restore the former illegal one. But everybody else who, having repented of breaking the law, and having treated the marriage as void, has separated from the person who never was his wife, shall be married compulsorily by the Bill to that person. Is that the sort of legislation of which your Lordships will approve? You not only give to the law-breakers themselves everything they ask, but you say that persons

[1] The Bishop of Oxford.
[2] The Bishop of Ripon.

who have regretted their disobedience of the law shall be forced back into their original illegal relations. Then another difficulty presented itself to the framers of the Bill. What are we to do with respect to rights of property, vested and expectant? You cannot take away from a remainder-man that which by law belongs to him. There may be remainders vested in expectancy in real or personal estates under settlement. If there was a daughter of the first marriage with the deceased sister, she would be entitled in remainder to settled property, whether real or personal, in preference to any sons of the sister whose marriage you are asked to legalise; and all the children of the first marriage, or even uncles, nephews, or cousins, would take a succession exclusively of the issue of the second marriage. It would be otherwise if the issue of the second marriage were legitimate. So the Bill says that all existing equitable and contingent rights shall remain the same after the passing of the Bill—in other words, that, while for some purposes the children of these marriages will be recognised by the law as such, they will not be so recognised for other purpose. They are to be still illegitimate as regards estates under settlement; but in other cases they are to be legitimate; so that you establish them in inconsistent relations under the same Bill. I think I have said enough to show that if your Lordships should at any time be persuaded, contrary to my own conviction, that the main principle of the Bill is right, you must set to work to give effect to your wish in a totally different manner. You must not by retrospective legislation try to render legal that which was not lawful and cannot properly be made so. You must consider how far your principle ought to go, and I am sure you can never stop short of the abolition of all marriages of affinity. If so, let the existing prohibitions be removed in an intelligible and consistent measure. Do not let us have piecemeal legislation concerning so important a matter, for the main purpose of giving to persons who have broken the law the same relief as if they had obeyed the law. I will now, with your Lordships' permission, say something as to the main principle involved in this question. I have said that all members of society are interested in it—not only those who have married or are wishing to marry their deceased wives' sisters, but those who have not done so, and are not desirous of doing so. Every married man whose wife has sisters has an interest in that condition of society which is produced by the state of law which makes his wife's sister his "sister-in-law." Our popular expression exactly hits the principle. The law makes the wife's sister his sister, and if you alter the law the wife's sister for domestic purposes will be his sister no longer. Do you want prohibitory laws against marriage within any degrees of relationship, or

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do you not? I think so. It is necessary and important so to fence round the sanctity of the domestic hearth upon the subject of marriage as to make safe and secure, as far as law can do so, the unrestrained and peculiarly affectionate intercourse which ought to exist for the happiness of families between the closest and nearest relations. If the principle be a right one, of course it extends to all the immediate members of one's own family. We know that the brutal passions of some of the lowest order of mankind are capable of overleaping even the natural barriers which exist between parent and child, between brother and sister. But as a general rule the repugnance to such unnatural relations is so great that they would be rare even if no prohibitory laws existed. When, however, you pass from these closest relationships, everybody feels that legal prohibitions are necessary and salutary. The moment you go a little further in the circle of relationship the power of the prohibitory law becomes stronger, because, the more remote the connection, the more important it is to fence it. Take the case of uncle and niece. We know that in some countries dispensations are granted for such marriages; and there the principle of such unions being admitted men are not restrained by natural repugnance from forming them. You want a fence in such a case. You want it peculiarly in cases of affinity, for the very reason that in those cases the natural repugnance is less strong. But the question is asked, "Do you want any prohibition in cases of affinity at all?" Surely you do. Is not the wife to associate in your home with her sisters, and her mother, and her daughters, on the same footing as before? Or do you wish that marriage shall make a difference in the position of the wife and her sisters, when she feels that one of them may become the possible wife of her husband? So with regard to the husband's brother. Is he to be only a brother to the wife, or to be looked on as a possible husband to the wife? The truth is, that the husband and the wife are so united that you cannot make their intercourse with their own brothers and sisters really sisterly and brotherly—you cannot make it unrestrained—unless you apply the same rule to both of them. That is the principle on which the law has proceeded, and I say it is a most wise and salutary law that you should carry the fence as far in favour of the relatives of the wife as of the relatives of the husband, so that the two may be thoroughly identified, and the intercourse which is perfectly unrestrained as to the one should be equally unrestrained as to the other. Is it possible, and would it be safe, that a husband should treat a wife's sisters as his own if he were allowed to marry them? And would not children suffer as well as husbands and wives? What is the real meaning of the argument that wives' sisters would prove the best stepmothers the

children could have? It means that the wife's sister is the children's aunt, and is likely to bear them a closer affection than a stranger. Nothing can be more true under a law which does not invite her to become their stepmother. But, if you alter that law, you will deprive the children of the unrestrained and familiar affection of every unmarried aunt who thinks it wrong, or who is not willing, to marry their father. They are not now so deprived even during the widowhood of the father. Most of us know cases in which the wife's sister now lives in the same house, and takes care of her sister's children, without suspicion or reproach. But this could not continue under the present Bill. It is impossible that a woman can occupy the position of a sister and at the same time be by law a marriageable person. Our divorce law says that in a case of adultery with a wife's sister the husband shall not be capable of marrying again. I should be sorry, whatever the marriage law prescribed, to see it otherwise. These are good, solid reasons, of a social and natural character. Some arguments have been submitted to your Lordships based on religious considerations. One noble Lord has sought to establish it as a fundamental principle that no marriage can be prohibited except the prohibition can be directly supported by some text in Scripture. But how would that noble Lord, in accordance with that principle, prohibit polygamy? Certainly not from that particular text in Leviticus upon which he relied for his argument, because that text, as he interprets it, seems to contemplate marriage during his wife's lifetime with some person other than his wife's sister. Opinions have been forcibly expressed by some in favour of polygamy, and one author, not a bishop indeed, but a popular clergyman and the brother of a bishop in the last century, has traced many of the present evils which trouble us to its prohibition in this country. We are told how well marriage with a deceased wife's sister answers where it has been tried. But the same thing has been said of polygamy; and I think the statement is of about as much value in the one case as in the other. When a measure similar to this was before the House of Commons some years ago, I read an extract from the "Times" citing the following passage from the "Chicago Tribune." Your Lordships will notice the glowing colours in which the writer paints the happy results of the introduction of polygamy into Salt Lake City:—

> But about the practical operation of polygamy, as you call it. That is what you most probably want to know, and I shall enlighten you, from my observations and experience. When I came to Deseret there were not many who were in the enjoyment of more than one wife; and many, or most, of the new comers were opposed to it. But, as they saw how beautifully and harmoniously those families lived where there were two or more wives, their prejudices gradually gave way, and among no class

was this change more apparent than the women. At the present time, if a vote were taken on the subject, I venture to say that nine out of every ten women who have lived here two years would sustain our present social system in this particular.

I do not want to compare the morality of other countries with the morality of our own. We comforted ourselves with the belief that respect for the sanctity of marriage stood high in this country until the Divorce Court was established. We cannot speak quite as complacently now; but marriage is still held among us to be honourable. How is it that marriage in some other countries is less respected? Do we not know that the facilities for divorce in some of those countries depreciate the estimation in which the marriage vow is held? It would not be right to press the argument based on the Scriptures too far in an assembly such as this, because there are some outside who would decline to argue the question on that ground, discarding religion and refusing to admit the authority of the Scriptures. But, if we are to prohibit only such marriages as are prohibited by the letter of the Old Testament, we must repeal the prohibition in the case of thirteen degrees prohibited by our law and not prohibited by the letter of Leviticus; and, on the other hand, if you endeavour to arrive at the principle contained in that chapter in Leviticus, and to lay down a marriage law in accordance with that principle within the range and limits of the degrees which are prohibited there, you will arrive at our present marriage law. There is one other very important point. We have been told that this is a poor man's question, and that the poor ask for this alteration of the law. My information does not support this. In 1859 I received, through an eminent prelate, a number of letters, which I have in my hand, from clergymen who had laboured many years in some of the largest centres of population. These clergymen assert that in their experience the poor did not generally practise or approve these marriages. One of those to whom I allude is Dr. McNeile, the present Dean of Ripon, for many years a well-known clergyman of Liverpool; another is Canon Stowell, for several years a leading clergyman of Manchester; another is Canon Auriol, of St. Dunstan's; another is the Rev. Mr. Rowsell; and there was also a layman, a Scripture Reader, who laboured among the poor in London for a great number of years, some of whose words I will read to your lordships. To the same effect was the testimony of a right reverend friend of mine, the Bishop of Rochester, at that time Rector of Kidderminster. The Scripture Reader of whom I have spoken, writing in April, 1861, says—

Being in daily and constant association with the labouring and poorer classes; as one living among them, and being in their homes in the most poverty-stricken neighbourhoods; intimately knowing hundreds of the families of the superior working

men, and also of those in the deepest poverty; being in the habit for years past of daily teaching many of the children of the very poor, and also being gratuitously occupied, and counting it a great privilege, in reading . . . . every Sunday to upwards of 200 men of the labouring class, I know from my own observation and conversations I have had with many on the subject of the proposed Bill that the marriage with the deceased wife's sister is not approved and is very rarely to be met with among them.

My noble and learned friend (Lord Hatherley), having taken great pains to ascertain the facts among the poor of Westminster, has borne the same testimony. If we were to bring together all the aberrations of our law in matters relating to the connection of the sexes we should no doubt have a very alarming and very lamentable catalogue of evils. But does any one suppose that by adapting our law to such a state of things we should not produce a greater amount of mischief? For these reasons, my Lords, I earnestly entreat you not to agree to the second reading of this Bill.

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